NINA HARRIS

IBLA 75-535 Decided March 30, 1982

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application. AA-7263.

Vacated and remanded.

1. Alaska: Native Allotments

> In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

APPEARANCES: Lucy M. Lowden, Esq., Alaska Legal Services Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Nina Harris has appealed 1/ from a decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting her Native allotment application, AA-7263, under the Alaska Native Allotment Act (Act), as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970). The application was rejected because BLM had determined that appellant had not used or occupied the land as contemplated by the Act. Appellant had not been given an opportunity for hearing. In Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), the court held that Native allotment applicants were entitled to notice and opportunity for hearing where there was an issue of fact with respect to an applicant's qualifications. Appellant filed a petition for reconsideration in light of this decision.

[1] At the present time, however, we must consider the following provision of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435, enacted on December 2, 1980:

> Sec. 905. (a)(1) Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18, 1971, and which describe either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve--Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following the effective date of this Act, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection, or where the land description of the allotment must be adjusted pursuant to subsection (b) of this section, in which cases approval pursuant to the terms of this subsection shall be effective at the time the adjustment becomes final. The Secretary shall cause allotments approved pursuant to this section to be surveyed and shall issue trust certificates therefor.

Those other paragraphs describe circumstances under which the application would remain subject to adjudication under the Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976). In this case, it appears that the only circumstance that would bar automatic approval would be the filing of a protest under subsection 905(a)(5), before the end of the 180-day period. 2/

1/ On Aug. 22, 1975, the Board issued an order which vacated its order dated July 14, 1975, which prematurely dismissed the appeal for failure to file a statement of reasons in support of the appeal.
2/ In addition to the filing of a protest, such circumstances include a determination that the land is valuable for certain minerals, or a determination that the application describes land in a previously established unit of the national park system or in a state selection but where the allotment is not within the core township of a Native village.

The record shows no reason why appellant's allotment application should not be approved under this statutory provision. There appear to be no valid existing rights in conflict with the application, and the land was not reserved on December 13, 1968. We have no basis for concluding that appellant's application was not pending before the Department on December 18, 1971. 3/ Where a Native allotment applicant meets the requirements of subsection 905(a)(1), failure to provide adequate evidence of use and occupancy does not bar approval of the allotment application. The State Office, therefore, should hold appellant's application for approval, subject to any action which may have arisen before the end of the 180-day period which would preclude approval under subsection 905(a)(1) and require adjudication pursuant to the provision of the Native Allotment Act. Jack Gosuk (On Reconsideration), 54 IBLA 306 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our summary dismissal of July 25, 1975, and the decision appealed from are vacated and the case remanded for further action consistent with this opinion.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

3/ The requirement that an application be pending before the Department on Dec. 18, 1971, must be met regardless of whether the application is approved under section 905(a)(1) of the Alaska National Interest Lands Conservation Act or the Alaska Native Allotment Act, because the Native Allotment Act was repealed on that date and no application could be approved unless it was pending before the Department of the Interior on Dec. 18, 1971. 43 U.S.C. § 1617(a) (1976). Although Harris' application was dated Sept. 23, 1971, it was not filed with BLM until Mar. 20, 1972, when the Bureau of Indian Affairs (BIA) filed it on her behalf. It appears that many Native allotment applicants had filed their applications or evidence with the BIA prior to Dec. 18, 1971, but BIA held them past the time when they were required to be filed with BLM. Such applications are deemed to be pending on Dec. 18, 1971. See, e.g., Julius F. Pleasant, 5 IBLA 171 (1972). On remand Harris should be required to establish that her application was filed with BIA prior to Dec. 18, 1971.